



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	SB0146	Title:	Biomass tax credit
Primary Sponsor:	Laible, Rick	Status:	As Introduced

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|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$45,117	\$36,617	\$37,340	\$37,340
Revenue:				
General Fund	(\$128,225)	(\$128,225)	(\$320,563)	(\$320,563)
Net Impact-General Fund Balance	<u>(\$173,342)</u>	<u>(\$164,842)</u>	<u>(\$357,903)</u>	<u>(\$357,903)</u>

Description of fiscal impact:

This bill would provide a credit against individual income tax or corporate license tax for biomass sold to a Montana biofuel producer. Credits would be about \$0.1 million in FY 2010 and FY 2011 and \$0.3 million in FY 2012 and FY 2013. If additional facilities are built to make biofuels from biomass, credits could eventually be much higher.

FISCAL ANALYSIS

Assumptions:

1. This bill would provide a credit against individual income tax or corporate license tax to a person who produces or collects biomass and transfers the biomass to a Montana biofuel producer. The credit amount is
 - a. \$0.05 per pound for oilseed,
 - b. \$0.90 per bushel for grains other than corn,
 - c. \$0.10 per gallon for virgin oil or alcohol from Montana-based feedstock,
 - d. \$0.10 per gallon for used cooking oil,
 - e. \$10 per wet ton for wastewater biosolids,
 - f. \$10 per green ton for woody biomass collected in Montana,
 - g. \$10 per green ton for crop residues,

- h. \$5 per ton for yard debris and food waste, and
 - i. \$5 per ton for animal manure or rendering offal.
- 2. New biomass use for energy will be limited by the facilities available to use it; therefore, credit use through FY 2013 will be estimated as a fraction of potential credits on existing, quantifiable biomass use for energy. Woody biomass is by far the largest contributor to biomass energy usage, as well as being one of the few quantifiable sources of energy. For the first two years, total credits are assumed to be equivalent to credits for 10% of woody biomass currently used in electricity generation. For the third and fourth years, total credits are increased to the equivalent of credits for 25% of woody biomass currently used in electricity generation.
- 3. In 2007, there were 88,086,000 kilowatt-hours (kWh) of electricity generated in Montana using fuels derived from wood (Energy Information Administration, U.S. Department of Energy, *Renewable Energy Annual*). The heat input required per kilowatt-hour of electricity generated for a typical wood waste fired cogeneration plant is 14,500 Btu/kWh (Northwest Power and Conservation Council, *5th Northwest Electric Power and Conservation Plan, Appendix J*). The average heat energy released by burning a ton of wood waste is 9,961,000 Btu (Energy Information Administration, U.S. Department of Energy, *Renewable Energy Trends in Consumption and Electricity 2006*). Based on this information, there were 128,225 tons of wood waste used to produce electricity in Montana in 2007 ($88,086,000 \text{ kWh} \times 14,500 \text{ Btu/kWh} \div 9,961,000 \text{ Btu/ton}$).
- 4. The credit would be available beginning tax year 2009. Credits for 2009 and 2010 will be \$128,225 ($10\% \times \$10/\text{ton} \times 128,225 \text{ tons}$). Credits for 2011 and 2012 will be \$320,563 ($25\% \times \$10/\text{ton} \times 128,225 \text{ tons}$).
- 5. Credits would be claimed on income tax returns filed in the fiscal year following each tax year. The first credits would be claimed in FY 2010.
- 6. The credit a taxpayer may claim for a tax year is limited to their tax liability for that year. However, a credit may be carried forward for up to four years or sold to another party with tax liability. This fiscal note assumes that any credits that would have to be carried forward will be sold and claimed in the current fiscal year.
- 7. This credit would require a new line on both the individual and corporation tax returns and additional instructions in the tax return booklets. A new credit form and a form for credit transfers would also be needed. The Department of Revenue would incur one time costs of \$4,000 for developing forms in FY 2010.
- 8. Although there is a limited number of bioenergy facilities, there may be a large number of taxpayers who take the credit for selling biomass to these facilities. The Department of Revenue would need an additional 0.5FTE tax examiner to process and audit credit claims. Annual salary would be \$18,298, and benefits would be \$10,623. Operating costs would be \$7,696 per year, and one-time costs to set up a new employee would be \$4,900.

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<u>Fiscal Impact:</u>				
FTE	0.50	0.50	0.50	0.50
<u>Expenditures:</u>				
Personal Services	\$28,921	\$28,921	\$29,644	\$29,644
Operating Expenses	\$11,296	\$7,696	\$7,696	\$7,696
TOTAL Expenditures	\$45,117	\$36,617	\$37,340	\$37,340
<u>Funding of Expenditures:</u>				
General Fund (01)	\$45,117	\$36,617	\$37,340	\$37,340
<u>Revenues:</u>				
General Fund (01)	(\$128,225)	(\$128,225)	(\$320,563)	(\$320,563)
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$173,342)	(\$164,842)	(\$357,903)	(\$357,903)

Long-Term Impacts:

1. If additional biofuel facilities are built in the state, credits could increase significantly in later years. For example, there are on the order of 40 million dry tons of biomass in small diameter trees on accessible land within 50 miles of a city in western Montana. If 5% of this amount were harvested for use in biofuels each year, the resulting credits would be \$20 million per year.

Technical Notes:

1. This bill provides a tax credit for the sale of a list of commodities for use in biofuel production, with the credit given as a dollar amount per ton, wet ton, or green ton. It is not clear whether these weights, particularly “wet ton” and “green ton,” are intended to mean weight adjusted to standard moisture content or weight regardless of moisture content. The bill should either define these terms or give the Department of Revenue authority to define them in rule.
2. Subsection 1(8)(a) defines “Agricultural producer” to mean “a person that produces biomass that is used in Montana as biofuel or to produce biofuel.” This definition is significantly different from the ordinary meaning of the term. It includes persons who would not ordinarily be considered “agricultural producers” and excludes most who are. To avoid confusion, it would be better to use another term, such as “biomass producer.”
3. Subsection 1(8)(d) defines “biomass collector.” It is not clear from this definition whether the term is meant to cover intermediaries, who collect and resell biomass from biomass producers, or persons who collect biomass they do not produce, such as slash from others’ logging operations. If the term does not include intermediaries, it appears that no credit could be claimed in cases where the producer or collector does not sell directly to the biofuel producer.
4. Given the ambiguity in the definition of “biomass collector,” the intent of Subsection 2(3) is unclear. If “biomass collector” means an intermediary who buys and sells biomass, Subsection 2(3) appears to prevent the transfer of credits between a biomass producer and an intermediary. If “biomass collector” means a person who collects freely available biomass, Subsection 2(3) appears to prevent the transfer of credits between parties who are able to claim credits directly for their own actions.

5. Subsection 1(2) specifies that the action a taxpayer must take to be eligible for the credit is transferring biomass to a biofuel producer. It appears that a biofuel producer would not be able to take the credit for producing or collecting biomass itself. Also, the term “biofuel producer” is not defined in the bill or in Title 15, Chapter 32, where Section 1 would be codified.
6. Subsection 1(8)(c)(A) defines biomass as including “forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce wildfire risk.” It is not clear whether the clause “conducted to improve forest or rangeland ecological health and reduce wildfire risk” is intended to modify the phrase “debris from harvesting or thinning” or to modify the single word “thinning.” If the first reading is correct, “biomass” would not include slash from commercial logging operations. If the second reading is correct, “biomass” would include all logging slash. This fiscal note assumes that the first reading captures the intent of the bill. If the second reading is correct, the amount of credits is likely to be higher.
7. There appears to be an extra comma between “wheat” and “straw” in Subsection 7(g). Subsection 7(b) provides a credit amount for grain crops.
8. Subsection 7(h) provides a credit for “municipally generated food waste.” This term is not defined, and it is not clear whether the intent is to provide a credit for food waste from municipal food service facilities or for food waste collected by municipal solid waste utilities.
9. Subsection 1(1) specifies that the credit is for biomass used in Montana as biofuel or to produce biofuel. Subsection 1(7) limits the credit for oil or alcohol feedstocks and woody biomass to biomass produced in Montana. The bill does not require a Montana source for other types of biomass. This fiscal note assumes that the intent is to provide a credit when these other types of biomass are used in Montana regardless of their source.
10. It appears that the credit could be claimed under Subsections 1(7)(a) or (b) for supplying oilseed or grain to be used in oil or alcohol production and that the credit could then be claimed under Subsection 1(7)(c) for supplying that oil or alcohol for use in biofuel production. If the intent is not to provide this double credit, it needs to be made explicit.
11. This bill does not make any provision for pass-through entities to claim the credit for their owners.
12. Unlike most credits, this bill does not provide a maximum credit per taxpayer.

Sponsor's Initials

Date

Budget Director's Initials

Date